

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

SAMUEL THOMAS LUCERO,

Petitioner,

Case Number: 06-10248

v.

HON. MARIANNE O. BATTANI

BARRY D. DAVIS,

Respondent.

**OPINION AND ORDER OF SUMMARY DISMISSAL WITHOUT PREJUDICE
AND REVOKING ORDER REQUIRING RESPONSIVE PLEADING**

Petitioner Samuel Thomas Lucero, a state prisoner currently incarcerated at the Newberry Correctional Facility in Newberry, Michigan, has filed a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 alleging that he is incarcerated in violation of his constitutional rights. This petition is identical to a habeas corpus petition already pending in this Court. The Court, therefore, shall dismiss the pending petition.

On September 2, 2005, Petitioner filed a petition for a writ of habeas corpus in this Court, challenging the constitutionality of a second degree murder conviction obtained in Macomb County Circuit Court. That case is assigned to the Honorable Bernard A. Friedman. Lucero v. Davis, No. 05-73402. The petition was originally dismissed without prejudice on Petitioner's motion. But, proceedings have resumed in that matter as Respondent has filed a response in opposition to the petition and the supporting Rule 5 materials. Petitioner has filed a reply brief.

On December 26, 2005, Petitioner filed the instant petition for a writ of habeas corpus. This petition challenges the same conviction challenged in the petition currently pending before Chief Judge Friedman and raises claims that are, in all material respects, identical to those raised in the earlier-filed petition. Therefore, the instant petition is duplicative and must be dismissed. *See* Davis v. U.S. Parole Commission, 1989 WL 25837 (6th Cir. 1989); Moates v. Barkley, 147 F.3d 207, 209 (2nd Cir. 1998). To the extent that Petitioner wishes to raise additional claims not already before the Court in the earlier-filed petition, Petitioner may seek leave of Court to do so in accordance with the requirements of Federal Rule of Civil Procedure 15.

On January 30, 2006, the Court issued an Order Requiring Responsive Pleading. Given that the Court has determined that the pending petition is subject to summary dismissal, the Court shall revoke that Order.

Accordingly, for the reasons set forth above, **IT IS ORDERED** that the petition for a writ of habeas corpus is **DISMISSED WITHOUT PREJUDICE**.

IT IS FURTHER ORDERED that the Court's Order Requiring Responsive Pleading issued January 30, 2006 is **REVOKED**.

s/Marianne O. Battani
 MARIANNE O. BATTANI
 UNITED STATES DISTRICT JUDGE

DATE: March 21, 2006